D e c i s i o n

IN THE MATTER OF THE *HUMAN RIGHTS CODE*, +S.O. 1981, Chapter 53 as amended,

AND IN THE MATTER OF THE COMPLAINT MADE BY NOOLIA BOOKER, DATED MAY 28, 1987, ALLEGING DISCRIMINATION IN OBTAINING OCCUPANCY OF ACCOMMODATION ON THE BASIS OF MARITAL STATUS AND FAMILY STATUS BY FLORIRI VILLAGE INVESTMENTS INC., SAM BOIWSNIOT AND KARL BLETA, CONTRARY TO SECTIONS 2(1) and 8.

Board of Inquiry

W. Gunther Plaut

(appointed by the Minister on April 28, 1989)

APPEARANCES:

Ms Marilyn Ginsburg	For the Ontario Human Rights Commission
Ms Noolia Booker	Complainant, in her own behalf
Mr John R. Ward	For the Respondents, Floriri Village Investments Inc. and Mr Karl Bleta

Dates and Places of Hearings: April 14, 1989 (preliminary conference by telephone to establish dates for hearings); May 23, August 16 and 17, 1989, at 180 Dundas Street West, Toronto, Ontario.

At the end of the hearings on August 17 the Chairman adjourned further proceedings until the day he would receive final transcripts, which occurred on August 29, 1989, which date then constituted the conclusion of hearings in the matter.

Outline of the Case.

Noolia Booker, the complainant, is a single mother[1] who alleges that, in October 1986, she attempted to rent an apartment for herself and her daughter, but was twice refused because she was a single parent. The building, at 3131 Eglinton Ave. East in Toronto, is owned by Floriri Village Investments Inc.("Floriri").

Incident 1. She and her friend Candis Peniston, who accompanied her, were told by the superintendent, Sam Boiwsniot, that it was a "a family building" and therefore apartments would not be rented to single parents or to common-law couples. When her friend complained that this was not fair she was told that such was management policy. Thereupon Booker left and did not fill out an application.

Incident 2. Subsequently, she saw an advertisement of an apartment and, upon telephonic inquiry, found that it was the same building where she had previously been refused. She claims that she did not identify herself on the telephone and was told again that the apartment was available for married couples only. She indicated she was coming to fill an application. This time she was accompanied by Sue Durkee, a friend with whom she was boarding at the time. Boiwsniot, the superintendent, seemed to recognize her and made it clear again that management would rent to married people only. In the end, however, she did leave an application and the required deposit cheque for $ 1,000.

She testified further that she was called later by Floriri's chief officer and owner, Karl Bleta. He said that he would call her back and let her know whether she would be chosen from among the applicants. When she discovered thereafter that the apartment was no longer available she went to the bank and stopped payment on her cheque.

A half a year later, after spending much time and effort aimed at locating suitable living quarters, Booker decided to file a complaint with the Ontario Human Rights

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[1] She is separated from her husband, and is *de facto*, if not *de iure*, a single, unmarried mother and will be so described in the following.

Commission ("the Commission") against Floriri and its owner Karl Bleta, as well as against the superintendent, Sam Boiwsniot, on the basis of the *Ontario Human Rights Code* ("the *Code* ") s. 2(1) and 8.

S. 2(1) reads:

> Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of...marital status, family status...

S. 8 provides:

> No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.

In the initial stage of the investigation, in October 1986, Human Rights Officer Robert Seales took a witness statement from Boiwsniot, but the latter -- who was dismissed from his job in January 1988 -- could subsequently no longer be located and did not appear at the hearings.

His absence turned out to be am important factor in the proceedings, for his words and actions are at the centre of the case. However, since he could neither corroborate nor deny the statements attributed to him by the contending parties, the Commission had to rely, in addition to the witnesses who quoted Boiwsniot, on the rental roll of 3131 Eglinton Ave. in order to show, by inference, that the refusal to rent the apartment to Booker was indeed, as Boiwsniot was quoted to have said, "management policy." The Commission claimed that the roll shows that during the incumbency of Boiwsniot only two apartments were rented to other than married persons.

Respondents, on the other hand, not only denied that such a policy existed and interpreted the rental statistics differently, to support their point of view, but also contended that Boiwsniot was unlikely to have made the statements attributed to him, since it was his job merely to show inquirers the apartment and take their applications and deposits. All other decisions were then made by the owner and his

daughter, who also appeared as a witness. Further, Bleta introduced his own daily calendar notes, made after speaking with Seales, to show that he never discriminated. He testified further that he had queried Boiwsniot about the allegation of Booker, and that the superintendent had denied that he ever made such a statement. After that, Bleta considered the matter closed. Further, both he and his daughter said they could not remember ever seeing Booker's application and cheque (though they did not claim that in fact they did not receive them), and that the circumstances surrounding her alleged denial of accommodation were sufficiently unclear to draw the conclusion which complainants did. There were also some other matters believed to show that one side or the other was more credible.

The Evidence.

1. The Commission's and Complainant's Side.

a. *Noolia Booker, complainant.*

She is today a woman in her thirties, with a five year old child. In 1986, when the events under consideration took place, she was working for Tower Department Stores, a job she had held for four years, and was paid seven dollars an hour, or about $ 300 a week. Her credit was good; she had no debts and had never defaulted on any obligation. When looking for an apartment she would be accompanied by her child, who was at this time two years old.

Incident 1: A friend, Candis Peniston, told her of a vacancy at 3131 Eglinton Ave. East and in October 1986 went with her to check out the accommodation. Superintendent Sam Boiwsniot, upon learning that Booker was not a married woman, refused her, asked no further question and did not give her an application to fill out.

From the examination-in-chief:

Q. And he [Boiwsniot] showed you the apartment?

A. Yes, he did.

Q. Did you like it?

A. Yes. I t was very good and I told him I would like it.

Q. Did you ask him if you could rent it?

A. After he told me that, I didn't really belong or anything...

Q. Did you get a chance to make out an application form?

A. Not on that day.

Q. Why was that?

A. When he told me that I just left. I was in shock, right, and I didn't know much about things like that.

...

Q. Did he ask you any other question, for example your salary or where you worked or your credit rating?

A. Nothing, nothing.

Q. So the only information he had about you...

A. ...was that I needed an apartment and that I was a single parent..

Q. Did you give him any other information at that time? Did you say anything to him to try and get their apartment or to see what he would say or anything?

A. Well, I said I was getting married just to see what was going to say.

Q. What did he say?

A. He said it didn't matter, that I had to be a married person.

Q. Were you in fact getting married?

A. No, I wasn't.

Q. You were doing it for effect, in other words?

A. Yes, I just wanted to see what he would say. (Proceedings, pp. 33-35.)

Incident 2: Later, upon reading of another vacancy and learning that it referred to the same apartment building, Booker went again, this time taking with her Sue Durkee, a friend with whom she was staying at the time. A group of other applicants were there already, waiting to be shown the apartment. They all received applications,

but Booker did not; probably Boiwsniot recognized her. Nonetheless, he gave her an application which she filled out, leaving a deposit for two months' rent ($ 1,000).

Subsequently, she received a call from the owner, Karl Bleta, which made her hopeful that she was getting the apartment after all. However, nothing further eventuated, though her cheque was not returned. She then stopped payment on it.

Finally, in March 1987, she found an apartment which was, however, very expensive ($ 800 a month), and she left it some 14 months later. She now lives in a $ 500 basement apartment, which is cramped and has a washroom which had to be shared with others.

Since she was well employed and therefore could not get public assistance in her quest, she decided to quit her job and go on welfare. Only then did she land an accommodation with the Metro Housing Authority.

All along she had been under great stress, had frequently suffered from headaches, and had spent endless time on the TTC (the Toronto transportation system) looking for an apartment.

Cross examination inquired whether she had been looking before October 1986; she answered affirmatively ("a couple of weeks, I guess"; Proc. p. 53), but that her quest had been met with either a " No vacancy" response or that she was deemed to have too brief a work record to establish her reliability as a tenant.

> Q. Do you know why you were refused the units?
>
> A. I did. They contacted me and some said I was not working long enough, because I was just starting and something like "We don't have any vacancies" or things like that.

She was also asked how long she had known Peniston (answer: from the time her daughter was a baby) and Durkee (answer: she had met her at work).

I found Booker to be straightforward, speaking without adornment and with assurance. She was a believable witness.

b. *Robert Seales.*

He is a Human Rights Officer in Toronto, working for the Commission. When he received Booker's telephonic complaint he considered it a priority matter and contacted Boiwsniot and Bleta the same day. He read his notation, dated October 10, 1986, into the record (exhibit 3):[2]

> Note. OHRC [Ontario Human Rights Commission] Officer spoke with the Apt. Supt.
>
> Sam Boiwsniot. He said that it was the management's policy to give preferential treatment to married couples over couples living common law. He also expressed a preference for married parents as opposed to single parents (as the complainant was).
>
> Officer later spoke with Karl Bleta, Manager.He expressed similar views. He said his apt. building was a "family type building" and that he had the right to rent to whomever he pleased and to deny rental in the same manner. When advised that the complainant will be pursuing a formal complaint, he responded that he did not care. The complainant could take up the matter with whomever she wished. (Proc. pp. 70-71)

Seales further testified that Bleta was abrasive and dismissive and appeared not to care about the law.

Cross examination tried to elicit from witness that Bleta had said "I rent to all," but Seales had no recollection of it.

The witness was believable, clear, and confidently sure of his facts.

c. *Candis Peniston.*

The witness had met Booker three and a half years ago, when their children were at a day care centre.

Q. [Exam.-in/chief] Do you still see each other?

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[2] Underlined words so appear in the witness' own notation.

A. No, I haven't seen her since. I haven't seen her for the past three years actually. (Proc. p.80.)

Peniston helped her look for an apartment and she was the one advising her to contact the Commission. She read her witness statement, which was made to the Commission in May 1987 and refers to Incident 1, into the record (exhibit 4).

In October 1986, I (Candis Peniston) called Noolia Booker and told her about an apartment that was available. for rent. We went to see the apartment, which was 3131 Eglinton Ave. E. The superintendent showed us the apartment. She fell in love with it. We asked how much was the monthly rent. He told us $ 500.00. He then asked her how many people were going to live there. She told him that it was just herself and her daughter. The superintendent turned to her and said that the management only wanted married couples and no single parents or common-law, and it was strictly a family building. Disappointed we left. (Proc. pp.82-83)

In her oral testimony Peniston further recounted that she had remonstrated with Boiwsniot that this was not fair, but he had answered that he was only carrying out management policy.

Under cross examination she said that she had known Booker for about a year and a half (Proc. p. 85) and had looked with her at about ten buildings.

Q. How long had she been looking for an apartment?

...

A. Between six months to a year, I guess. I'm nor quite sure.. and filled out about five applications.

The witness did not know why Booker had been turned down previously.

She was clear about her recollections and appeared thoroughly reliable.

d. *Rick Dellavella.*

He has been a Human Rights Officer for some ten years and was the investigating officer in the case under consideration. He presented the Board of Inquiry with an analysis of the thirty rentals made during the time of Boiwsniot's incumbency as a superintendent, i.e., from October 1986 until January 1988 (exhibit 5). His analysis was said to show that during this period only one apartment went to a single person, and another to two women living together. Singles or single parents were generally replaced by married couples. (Proc. p.94).

> Q. [Exam.-in-chief] To tie all of this information together, how many in total, single parents and single people, lived at 3131 Eglinton Avenue East sometime during this period of time?
>
> A. My notes indicate that there were 36 and, broken down, 21 single parents and 15 singles.
>
> Q. how many of those obtained units while Mr. Boiwsniot was the superintendent?
>
> A. Two obtained units, one single and one single parent.
>
> Q. How many single parents and singles left while Mr. Boiwsniot was the superintendent?
>
> A. Nine left while he was superintendent, and again I have broken that down, three single parents and three singles.
>
> Q. How many of those were replaced by married couples?
>
> A. All of them. (Proc. pp. 96-97.)

The witness reported only on his analysis of the rental roll and on no other aspect of his investigation.

e. *Sue Durkee.*

She was the last witness for the Commission. She has known Booker for about four years; they continue to be friends. Booker and her child lived with her for about

six months; they got along well enough, though it was quite clear that, not surprisingly, there were some tensions.

Her witness statement (exhibit 6), read into the record , was signed May 15, 1987.

> In October 1986, I Sue Durkee, accompanied Noolia Booker to 3131 Eglinton Ave. E. to apply for a two bedroom apartment. On that day a two bedroom apartment was being shown to applicants. Noolia was among the group that the apartment was being shown to.
>
> Applications were being handed out to a group of people waiting to see the apartment. At that time Noolia was neglected and was not handed an application.
>
> After most of the applications were handed in by the group of people, Noolia asked for an application.
>
> Up until that time Sam [Boiwsniot] appeared to be ignoring Noolia. While Noolia was filling out her application Sam began taking people up in groups of four to see the apartment. After Noolia saw the apartment she handed her application and a check made out to Flori investments [sic] to Sam. At that time Sam told Noolia that the management only wanted married couples, that it was a family building. (Proc. pp. 102-103.)

Witness further testified that Booker continued to look for accommodations and would do so after work, returning home sometimes as late ten or eleven o'clock.

> Q. [Exam.-in-chief] ...did you feel that the whole thing was having effects on her and the baby?
>
> A. Yes, it was definitely having effects.
>
> Q. Can you explain that for me?
>
> A. She would get so worried at times that I would hear her crying or she would be talking to her friends and they would be trying to comfort her, you

know, "Keep going, keep trying, keep going out there, you'll find something," and she was getting very depressed and worried.

Durkee intimated that the fruitless search was wearing on herself too; it "seemed forever" until Booker finally moved out.

Cross examination aimed at establishing that witness tried to help Booker move out and that she was her friend -- propositions to which Durkee agreed.

Q. There was some tension in the household and you were wanting Ms Booker to leave your apartment; is that correct?

A. Yes.

Q. You wanted to help her?

A. I wanted to help her, yes.

Q. So you were happy to go with her on this particular occasion to help her get an apartment?

A. Yes, she is a good friend.

The witness was clear and believable.

2. The Respondents' Side

a. *Karl Bleta.*

He describes himself as manager and president of the company that owns 3131 Eglinton Ave. East. He and his daughter (who was to testify later) scrutinize every application and they alone decide who is and who is not to be accepted as a tenant. The superintendent's role is simply to show an apartment and obtain the application and deposit. The decision is based primarily on what Bleta and his daughter judge to be the financial reliability of the applicant.

Sam Boiwsniot was the super of the building from the fall of 1986 to January 1988. The application of Booker could no longer be located since it was the custom to dispose of all unsuccessful applications three or four days after an apartment was rented.

Bleta submitted as exhibit 7 the successful application of Mr. and Mrs. Boguslaw Rzepecki for a two-bedroom apartment (#511), signed on October 25, 1986. It showed the occupants to be a family with a double-earner income, well above that of Booker. Rental records (exhibit 10) show that #511 was rented as of November 1986. Since Booker laid her complaint on October 10, and assuming that we are dealing here with Incident 2 (at which time she handed in her application and cheque), two possibilities exist: either the apartment was not rented for two weeks after Booker made her application, or we are not dealing with the same apartment. I had no evidence before me to help me decide between these two possibilities.

Respondent further introduced, as exhibit 8, the successful application of Frankie Yu for apartment 308, to show not only this applicant's superior earning power but also to prove that Booker could not have inspected this apartment, since it was a one-bedroom facility only, while she was looking for two bedrooms. Yu's application, too, was signed some two weeks later, and his rental period began in November.

Circumstances being as vague as they are -- whether these accommodations were shown to complainant in Incident 1 or 2, and whether she did in fact see either of these apartments and, in Incident 2, apply for them -- I cannot draw any definite conclusion from these particular submissions.

When examining exhibit 10 (which is the complete register of rentals from 1983 to the present)[3] I found the following apartments to have been rented during the time that Booker claims she was refused accommodation:

October 1986 : apartment 709, a family with children;
: apartment 710, a single person;
: apartment 511, the Rzepecki family;
: apartment 106, the superintendent;
November 1986: apartment 408, a couple;
: apartment 308, the Yu family.

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[3] Bleta/Floriri acquired the building in 1983.

It would appear that (with the exception of the super's dwelling) only these apartments could have been the subject of Booker's contention. We have detailed evidence regarding the successful applicants for apartments 308 and 511, but not for the others.

Respondent claims that these latter accommodations went to persons who earned more than complainant and that, since financial potency was his main consideration, Booker was prone to be rejected, if indeed she was one of the applicants for that apartment.

I will leave it as a possibility that complainant was rejected in Incident 2 on financial grounds primarily. But this does not cover Incident1, and the best that respondent could possibly claim in that case is that, if Booker would have made an application, she would most likely have been rejected in favor of either of the two superior income applicants. All of which is so speculative that I cannot assign any probative value to this aspect of the case.

The question remains, however, whether the complainant was indeed denied accommodation because she and her child did not constitute a "family" for a "family building." An analysis of legal precedents will show that even if a discriminatory practice was only part of the consideration, then the whole action is tainted and discrimination is judged to have taken place (see below, footnote 6). Therefore, it was necessary to determine whether Boiwsniot and/or Bleta did in fact make the restrictive statements which the complaint has attributed to them.

Of importance, in this respect, is an entry into the daily calendar of Bleta which, compressed into the space for October 10, 1986, shows the following in his handwriting (exhibit 11):

> Spoke with Mr Sils
> Humen Right on
> We rent who eve pay
> the rent, is single mother or cople or single

people. [*sic*]

The meaning is clear: Bleta recorded that in his conversation with Human Rights Officer Seales he had denied having discriminated against single people or single parents as alleged. This stands in direct contrast to Seales' earlier testimony, but fits with Bleta's strong contention that he would never discriminate in such fashion and had not done so in the past. When asked in cross examination whether he had discussed the matter with Boiwsniot he answered in the affirmative, and that the super had denied Booker's allegation.

Q. [Cross-ex.] Did you speak with him?

A. I did.

Q. What did you say?

A. So and so I hear, and that's what I said.

Q. So and so you hear what?

A. That someone had come here and you have said you can't rent an apartment.

Q. What did Mr. Boiwsniot say in response to that?

A. He said "Don't believe those things, you know me, I don't do those."

Q...Did you say to him " I don't want you to do this, I don't want you to turn people away"?...

A. These instructions he had at the time he was hired and we never had any problem like that. (Proc. pp. 130-131.)

When asked whether it was not strange that there had been a sharp drop in rentals to any but married people, Bleta responded that he had no reason to examine such statistics since it was not his habit to make distinctions as to family status.

When confronted with Seales' earlier testimony Bleta was hesitant to characterize it squarely, although he implied that Seales was partisan and had encouraged witnesses to make trouble (Proc. p.152). Bleta pointed to his own unblemished record of 35 years in business. He, an immigrant, was grateful to Canada for the

opportunities afforded him and would not do anything that would make him undeserving of them. This was the reason he was contending the complaint, even though it was costing him a fortune.

Bleta was an agitated witness. He was emotional and at one point close to tears. I came to the conclusion that he is convinced he acted properly and within the law. Whether this belief squares with the facts is a question to which I will turn later when evaluating the total evidence.

b. *Stephne Orr.*

She and her two children have lived in # 412 since June 1987. She came upon the apartment when she walked by; Boiwsniot showed her the accommodation and said nothing about management policy.

When asked in cross examination why she had not been required to pay a deposit (as was the rule) she simply said that she had not been asked.

Orr was straightforward and her testimony believable.

c. *Skelcim Capa.*

He is of Albanian background and required an interpreter. He has been the building's superintendent since June 1989 and testified that, when an apartment was vacant he merely would show the unit and take the application and deposit. He testified that there was no policy regarding singles.

However, his inability to communicate such an issue to anyone but another Albanian was obvious, and therefore I could not attach any importance to his testimony. The previous superintendent who might have shed some light on policy was not called as a witness.

d. *Bertha Aiello.*

She is the daughter of respondent Bleta and functions in the business as Secretary and Assistant Manager. She referred to exhibit 10, which is the rental record from the time that Bleta acquired the building in 1983, and pointed to the fact that 16 singles had become tenants since that time to the present. It was company policy to rent to all without discrimination. Her testimony corroborated her father's.

Under cross examination she said that if in fact there had been a diminished number of rentals to singles and single parents, it was coincidental.

> Q. [Cross-exam.] Wouldn't you be concerned that all of a sudden you weren't getting very many applications from single parents if you have been doing this since 1983?
>
> A. But that hasn't been the case; and whether there have been single applications, single people, we have always had a variety and there has never been a time where we have had less in one year and more in another year. There has never been anything to make us suspicious of what he [Boiwsniot] was doing. We were never under that kind of situation...If there wasn't any single-parent applications or single couples, then there would be grounds for us to be suspicious and we would investigate. (Proc. pp. 173-174.)

It was all a question of when an application was made; sometimes one would be accepted because it was, at that moment, the best available.

She further averred that she was present when her father had talked with Boiwsniot, when the latter denied that he had had the conversation with Booker that she alleges had taken place.

> Q. Can you tell me what your father said?
>
> A. Well, my father questioned what Ms Booker was saying and Mr. Boiwsniot denied it.
>
> Q. Yes?
>
> A. And that's about it.

Q. Did you and your father have any discussions about it afterwards as to whether anything should be done on behalf of the company, to follow up to see if this kind of thing was taking place, or did you just say "If Mr. Boiwsniot said it's nothing, it's nothing"?

A. Well, we didn't put it to rest. Like I said, we attend to the building so frequently that it's very hard for the superintendent to do anything like that the way we run this building. We are there on weekends and we are there four or five times during the week. So, for him to do something like that or hold things back from us, it would have taken no time at all to find out by the consistency of us being there all the time. So I wouldn't say we put it to rest, and the super was always under our guard.

Q. Did you believe that it happened the first time, however, that Mr. Boiwsniot did it the first time when Ms Booker came to rent an apartment?

A. No, I didn't believe it. (Proc. pp. 182-183.)

To her, she asserted, the renter's marital status was irrelevant; she only wanted to know how many people planned to live in a given apartment. Yes, she added, she knew that it was illegal to refuse accommodation because of family or marital status. Boiwsniot would not approve or disapprove any application, and in any case -- since the building always had a mixed occupancy -- she could not imagine how the superintendent could possibly make the alleged statement.

The witness appeared sure of herself, and her answers were given clearly and without hesitation. She appeared to believe what she said, and in that respect too paralleled the testimony of her father.

3. Evaluation of the Evidence.

The Board was faced with two questions:

a. on a balance of probabilities, did Boiwsniot say that single parents were not welcome; and

b. if so, did Bleta, the owner, himself order the discriminatory policy to be instituted?

Re a. With Boiwsniot not being present at the hearing we are left with what others testify he said. Respondents' counsel did not raise the objection that we are dealing with hear-say evidence which may be deemed inadmissible. Indeed, hear-say is not involved at all, since what the witnesses claimed they heard constitutes their own direct evidence.

I found the testimony that Boiwsniot had discriminated as charged to be convincing, despite the fact that there were some discrepancies on the side of the complainants..

Thus, the length of Booker's searching for an apartment was given by her as about two weeks, and by her friend as perhaps six months to a year; Booker had spoken of a certified cheque which, I am told, is immune to a stop-order; and Booker's length of employment, at the time of the incidents, was described variously as two and four years. I lay no great weight on these variations which are in part explicable by the span of time which has since passed and has made memory less certain with respect to numbers and figures. Also, the statement by Booker that she had said to Boiwsniot that she was about to be married (which was not true but an attempt to test the him further) cannot -- as respondents' counsel suggested -- impugn the basic veracity of the complainant. And even if one should agree (which I do not) that witnesses Peniston and Durkee gave prejudicial testimony because they were the complainant's friends, there would still be still Seales, the Human Rights Officer. He was a third and disinterested party and his testimony fully agrees with Booker's and her friends' in the essential, namely, that Boiwsniot reaffirmed that "it was the management's policy to give preferential treatment to married couples." I believe that Seales gave unbiased testimony and do not accept the suggestion of respondents' counsel that Seales might have been so pre-occupied with intake duties on that day that he misremembered his conversations with Boiwsniot and Bleta. I

also believe that the Commission's other witnesses, including the complainant, spoke the truth when they reported on Boiwsniot's remarks.

A *prima facie* case having thus been clearly made, it was up to the respondent to disprove it.

Authorities for this shift of burden may be found in a number of decisions, e.g., *Cameron v. Nel-Gor Nursing Home and Nelson* (1984), 5 C.H.R.R. D/2170, at p. 2191, par.18486 (chairman Peter Cumming):

> Upon the Commission and the Complainant having established a *prima facie* case of discrimination...the onus falls on the Respondents to establish that there is no unlawful discrimination.[4]

This, in my opinion, the respondents failed to do with respect to Incident 1, which is here at issue. They tried to raise doubts about the veracity of the complainant and the Commission's witnesses, and they denied that Boiwsniot had ever made the statement attributed to him. Unfortunately Boiwsniot himself was not present to give his own testimony and have it evaluated by the Board, who is therefore left with a question of credibility of the Commission's witnesses. I <u>believe that Boiwsniot acted as alleged by complainant and Commission, and that therefore the building's owner, Floriri Village Investments Inc. must be held responsible.</u>

Such responsibility is unequivocally assigned by the *Code* in s. 44(1):

> For the purposes of this Act...any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation...shall be deemed to be an act or thing done or omitted to be done by the corporation...

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[4] See also *McMorris v. Northlander Motel* (1988) 9 C.H.R.R. D/5276-5277 (chairman Daniel J. Baum).

There is no question that, in dealing with applicants for apartments, Boiwsniot acted as an "employee or agent of the corporation," which therefore must bear the consequences of his discriminatory action.

But can he be said to have acted "in the course of his...employment" if management did not authorize him to do so? The answer is in the affirmative even if Bleta had given Boiwsniot contrary instructions -- a scenario dealt with expressly in the abovementioned case of *Cameron v. Nel-Gor* :

> Suppose an employee for a landlord refuses to rent to a respective tenant, on a prohibited ground...The employee does this notwithstanding the express general direction of the employer to all of its employees not to discriminate unlawfully (at p. D/2195, para. 18515 [7]).

This is the principle of vicarious liability enshrined in the *Code* s. 44(1) and interpreted with regard to discrimination in housing in *Jeffers v. Greenbook Manor Limited and Kostiauk* (Nov. 6, 1981, unreported; the decision deals with the old *Code* but is clearly applicable here). Chairman E.J. Ratushny, enunciated the following guidelines:

> There was no significant evidence to indicate that the management of Greenbrook Limited actively engaged in discriminatory practices...Thus, any contravention on the part of the Respondent company would have to be found in the vicarious acts of its agent, Mr. Kostiauk (p. 1).

To repeat: In respect to Incident 1, I hold Floriri, as the owner of 3131 Eglinton Ave. East, responsible for the discriminatory practice of its superintendent, Sam Boiwsniot against Noolia Booker.

Whether or not this holds true also for Incident 2 is a matter I do not have to decide at this point, given the antecedent action of the superintendent. To be sure, he delivered himself again of a discriminatory statement (that it was management policy to rent only to married persons), but in the end he did accept an application and cheque from the complainant. Thereafter, the decision to rent or not to rent to her

was up to management, which touches on the responsibility of Karl Bleta himself, a matter to which I will now turn.

Re b. Did Boiwsniot speak and act as he did at the behest of management? If he did, then management, too, in the person of Bleta, bears responsibility; if he did not and acted on his own or merely believed that such was the desire of management, then Bleta as an individual was not in violation of the *Code* , unless he had firm or reasonably firm knowledge of the discriminatory practices of his superintendent and failed to provide a remedy for them.

Counsel for the Commission tried to show, through an analysis of rentals made, that these revealed a distinct pattern of ongoing discrimination against single persons and single parents, a pattern to which Incidents 1 and 2 are directly traceable.

There does indeed seem to be a pattern of decreasing rentals to singles and single parents. Still, there have been such rentals throughout the years; and further, there is Bleta's staunch denial that such status played any role in his decision making; and there is the entry into his daily calendar.

i. To start with the latter, Commission counsel implied (though did not state outright) that the entry might not have been made on October 10, 1986 at all, but later, in order to fortify the respondent's claim that he never discriminated. However, I had no firm proof before me that Bleta doctored his record, and therefore must conclude that Bleta entered in his book what he had said that day to Seales on the telephone.

ii. I further have no reason to doubt respondent's contention that his superintendents never had any decision making power and were asked to do nothing more than show applicants the accommodation and take their applications and cheques. Nonetheless, experience shows that superintendents usually have some input, and witness Aiello said as much on the stand (Proc. pp. 190-191).

As a new employee Boiwsniot most likely eager to please his employer as much as possible and would therefore attempt to interpret his wishes as best he could. Bleta himself did probably at some point outline the kind of tenant that was desirable and express his preference for stable "family types," or the like, and likely referred to 3131 Eglinton Ave. as a "family building," as indeed he did to Seales.

By itself the expression "family building" is fairly neutral and carries of itself no discriminatory message. I am ready to believe that Bleta used this term and that Boiwsniot expanded on its meaning when he met with applicants. There is also a possibility that discussions between Boiwsniot and Bleta were not carried on in English but in Albanian, and that in the transposition of terms certain shadings occurred -- but this is speculation on my part, especially since I do not know whether in fact Boiwsniot was, like the current care taker, of Albanian background.

iii. I need hardly point out that intention to discriminate is not a pre-condition for finding someone culpable under the *Code*. See the note summarizing a decision by the Supreme Court of Canada, which interpreted the *Canadian Human Rights Act* , in *Robichaud and Canadian Human Rights Commission v. Her Majesty the Queen, as represented by the Treasury Board* (1987), 8 C.H.R.R. D/4327:

> The legislative emphasis is not on finding fault but on removing discrimination...The Act is concerned with the effects of discrimination, not causes...

And at p. 4330, para. 33937 the judgment itself says:

> ...it follows that the motives of intention of those who discriminate are not central to its concerns.

iv. Commission counsel also called attention to the preprinted application form (which asked about family status), but I draw no negative conclusion from this document. Commonly used forms have a life of their own and do not necessarily in and of themselves reflect on those who use them. The need to replace such forms is

another matter, and I shall deal with it later on, in my Order, when I specify the remedies.

v. In order to prove Bleta's personal responsibility, Commission counsel laid special emphasis on an analysis of the rental roll. Counsel tried to show that the pattern of rentals proves that Bleta must have given his superintendents instructions to prefer married couples, but I am not persuaded that in the balance of probabilities I should accept this conclusion. Statistical analysis is a complex matter and requires a thorough examination of all contributing factors, and I am not satisfied that enough of such factors were put before me.

Thus, while there is an indubitable decrease of rentals to any but married people, I cannot draw form conclusions from this fact alone. I would have to know, for instance, whether there was shift in population patterns in that section of Toronto, and whether large numbers of immigrants (many of them married with families) moved into the neighborhood. I also noted that while, statistically speaking, singles and single parents fared badly under Boiwsniot's superintendentship, in the overall picture management continued to rent to such people, and especially so after Boiwsniot was discharged (the reasons for this discharge were not enunciated before me).

vi. Still, I am faced with the fact that Bleta did want a "family building." Is the balance of probabilities such that, given the negative aspects of the rental roll, he instructed Boiwsniot to rent to married persons only?

Here, the absence of Boiwsniot as a key witness was most seriously felt. I came to the conclusion that without his testimony I could not hold Bleta personally responsible for his acts. Had Boiwsniot been present to testify, the "balance of probabilities" might very well have gone against his employer, but in his absence I am hesitant to make such a ruling. A balance of this kind cannot be adjusted so accurately that it can be read with precision, and in this case I find enough room for

doubt and therefore will not hold Bleta personally liable -- especially since he, as the owner of Floriri, must bear the consequences of his super's action.

I will therefore surmise that Boiwsniot interpreted Bleta's instructions so broadly that rentals to others than married people decreased sharply during his superintendency. When he left his employ they increased again, so that there certainly was no rigid policy on the part of management. As indicated, I cannot be reasonably certain that Bleta himself instituted a prohibited policy for rentals (which led to Incident 1) or that he helped to reject Booker's application (in Incident 2) on the basis of her marital and family status.[5] ▪

In sum, while Floriri Village Investments Inc., as the owner of 3131 Eglinton Ave. E., is responsible for the action of its agent, I absolve Karl Bleta from the charge of having discriminated personally.

I must add, though, that his initial unwillingness to cooperate with the Commission in clearing up this case was highly regrettable, and that his emotional assertion that he was a law abiding citizen stood in sad contrast to his obstructing a proper investigation, which thereby suffered considerable delay (Proc. pp. 5 ff.)[6] Seeing that he is the "directing mind" of the corporation, his behavior will therefore of needs reflect on the question of remedies.

4. Remedies.

Commission counsel had sought no remedies from Sam Boiwsniot, and none are ordered.

Floriri having been found in breach of the *Code*, the following awards were considered:

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[5] Were I to rule otherwise with regard to Incident 2, then of course the mere presence of prohibited grounds in the decision making process would taint the whole process. I have dealt with this matter in a previous decision: *Horton v. Niagara (Regional Municipality)* (1987), 9 C.H.R.R. D/4611.

[6] I signed a Consent Order on May 23, 1989, obliging Floriri and Bleta to grant the Commission access to certain records. This limited but did not avoid further delay.

a. Special damages. Commission counsel asked that $ 590 be reimbursed to Noolia Booker, consisting of $ 60 for fares on the public transit system, while she was searching for accommodation after having been refused by the superintendent; $ 5 for the cost of stopping payment on her cheque; and the rest, $ 525, for moving and storing expenses.

I am not persuaded that the latter request should be allowed. The moving and storing expenses were incurred after multiple moves by the complainant, and I have no right to assume that, had she been accepted at 3131 Eglinton Ave. E., she would have stayed there permanently. In other words, as counsel for the respondent company argued, these are not proximate expenditures, arising directly from the discriminatory act. As to the stop-payment expense, the complainant did not need to take that route, but could have picked up the cheque or have Floriti destroy it -- but in her state of mind her action is understandable and it arises directly from the discrimination visited upon her. I therefore award her altogether $ 65 in special damages.

b. General damages. Discrimination is a serious offense and not to be taken lightly, and it is not hard to sympathize with the complainant who, in the tight rental situation of Metro Toronto, found one door after another closed to her. Commission counsel asked for $ 2,000; respondent counsel suggested that, should judgement go against his client, half that amount would be a proper figure, seeing that the discrimination occurred without collusion by management and that it was perpetrated by a person subsequently discharged from his job and who, to boot, has disappeared.

In making my award I will not give any weight to the remark by Karl Bleta, made to Officer Seales, that he did not care what the law said. I lay this to his being upset that suddenly an agency of government appeared to intervene in his private domain. But I cannot condone his further delaying tactics which held up the investigation

unnecessarily and thereby increased the mental distress suffered by the complainant. He is the owner and officer of the corporation and therefore, in that sense, identical with it. Though he has not been found to have discriminated personally, his obstructing tactics have compounded the situation and have, in my judgement, impinged both on the complainant and his own company. Floriri is therefore ordered to pay the complainant Noolia Booker two thousand dollars plus interest.

Commission further asked that the Board order the following:

c. That the owner and his daughter as well as the new superintendent (*cum* interpreter) attend a special education session with a Human Rights Officer who would interpret to them the requirements of the *Code*. I feel that the investigation and the hearings made a sufficient impact on the management of Floriri, and I am further convinced that their superintendents will henceforth be properly instructed by them. Making them attend a special session at this point would seem to be punitive rather than educational.

d. That the Commission shall be entitled to inspect the rental roll of Floriri for a period of two years. The Board agrees.

e. That Floriri should post, in a place easily seen by all tenants, such excerpts of the *Code* (in English and French) as the Commission will find relevant to the circumstances. The Board agrees.

f. That Floriri submit to the Commission a rental application form which will be in consonance with the *Code*, and will thereafter use this form exclusively. Respondent counsel agreed to this request and he Board concurs.

ORDER

Floriri Village Investments Inc. is ordered to pay Noolia Booker two thousand dollars in general, and sixty five dollars in special damages. To this will be added the sum of $ 464.67 in interest,[7] for a total of $ 2,509.67.

Management of the company is ordered to

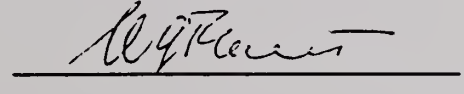
a. post a section of the Code, as outlined above, and do so within a month;

b. revise the rental form in accordance with legal requirements within three months of this Order; and

c. make the rental records of the company available to the Commission for a period of two years.

The payments are due on October 15, 1989, after which they shall attract additional interest. Until all above parts of the Order are complied with I shall remain seized of the matter.

Toronto, Ontario, September 15, 1989



W. Gunther Plaut, Board of Inquiry

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[7] The interest is figured at ten per cent (as set by the District Court) from the time the complaint was served, which I reckon to have been between three and four weeks after it was signed on May 28, 1987. If the date of serving the complaint was on or about June 15, 1987, the interest would run from then until the date of this Order, which is September 15, 1989, for a period of two years and three months. At ten per cent the sum of $ 2,065 thus attracts an interest of $ 464.67.